

AGREEMENT FOR SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
NEW RIVER ELECTRICAL CORPORATION

PREAMBLE

This agreement for the performance of services ("Agreement") is made and entered into on this _____ day of _____, 2008, ("Effective Date") by and between New River Electrical Corporation, a Virginia corporation with its primary business address at 15 Cloverdale Place, P.O. Box 70, Cloverdale, VA 24077 ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure professional services more fully described in this Agreement;
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. EMPLOYMENT OF CONTRACTOR.

City hereby employs Contractor to perform Services set forth in this Agreement. To accomplish that end, City may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of City's choice. City shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

2. SCOPE OF SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are more fully described in

Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

3. COMMENCEMENT AND COMPLETION OF SERVICES.

Contractor shall begin providing the Services under the requirements of this Agreement on the Effective Date of this Agreement. Such Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.

4. COMPENSATION AND PAYMENT TO CONTRACTOR.

- A. In consideration for Contractor's complete performance of the Services, City shall pay Contractor for all Services rendered and materials provided by Contractor in accordance with the rates as outlined in Exhibit B entitled "Fee Schedule." The payments made by City under this Agreement will be the amounts charged for Services provided and billed by Contractor, subject to verification by City, pursuant to the hourly rates set forth in the Fee Schedule supplied in writing by Contractor and maintained on file with City at the time the Services are provided.
- B. Contractor shall bill City on a monthly basis for the Services provided by Contractor during the preceding month, subject to verification by City. Payment to Contractor for Services will be made within thirty (30) days of City's receipt of invoice.

5. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall be three (3) years, beginning on the Effective Date of this Agreement.

6. NO ASSIGNMENT OF AGREEMENT/SUCCESSORS IN INTEREST.

This Agreement is a contract for professional services. City and Contractor bind themselves, their partners, successors, assigns, executors and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of City. However, claims for money due to or to become due to Contractor from City under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to City. In case of the death of one or more members of Contractor's firm, the surviving member or members shall complete the Services covered by this Agreement. Any such assignment shall not relieve Contractor from any of its obligations or liability under the terms of this Agreement.

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7. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

8. SUBCONTRACTING.

None of the Services provided under this Agreement shall be performed by subcontractors unless such subcontractors are specifically identified by Contractor and pre-approved by City in writing.

9. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.

It is agreed that in performing the work required under this Agreement, Contractor and any person employed by or contracted with Contractor to furnish labor and/or materials under this Agreement is not an agent nor employee of City. Contractor has full rights to manage its employees subject to the requirements of the law.

10. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

11. CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL.

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

13. USE OF CITY NAME OR LOGO.

Contractor shall not use City's name, insignia or distribute exploitative publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of City.

14. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

15. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

Contractor represents that its personnel and its subcontractors are qualified to furnish services in the form of labor and materials of the type and quality which City requires and that Contractor agrees to perform all work in accordance with generally accepted business practices and performance standards of the industry. City expressly relies upon Contractor's representations regarding its skills and knowledge. City shall restrict its service requests to those projects which are within the skill and capability levels of Contractor and its employees.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

16. MONITORING AND EVALUATION OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accordance with applicable City, county, state and federal requirements. If, in the course of monitoring and evaluation, City believes it has discovered any practice, actions, procedure or policy of Contractor which deviates from the terms of this Agreement, City may

notify Contractor in writing and Contractor agrees to respond in writing to City within seven (7) calendar days regarding such action, procedure or policy. However, if any action of Contractor constitutes a breach of this Agreement, City may notify Contractor in writing that the Agreement has been terminated pursuant to the provisions set forth in this Agreement. The City reserves the right to immediately suspend services if it believes an issue exists that would impact the safety of any individual or the provision of City services to the public.

17. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

18. CORRECTION OF SERVICES.

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

19. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

20. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

21. INSURANCE REQUIREMENTS.

A. During the term of this Agreement, and for any required time thereafter as set forth below, Contractor shall purchase and maintain in full force and effect, at no cost to City, the following insurance policies:

- 1) commercial general liability policy (bodily injury and property damage);
- 2) comprehensive automobile liability policy;
- 3) workers' compensation and employer's liability policy; and

- 4) If professional services (Engineering) are subcontracted, then subcontractor will purchase and maintain professional liability policy.
- B. Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C entitled "INSURANCE REQUIREMENTS."

22. AMENDMENTS.

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties and incorporated into this Agreement. Such changes, which are mutually agreed upon by City and Contractor, shall be incorporated in amendments to this Agreement.

23. INTEGRATED DOCUMENT - TOTALITY OF AGREEMENT.

This Agreement embodies the agreement between City and Contractor and its terms and conditions. No other understanding, agreements, conversations, or otherwise, with any officer, agent, or employee of City prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City.

24. SEVERABILITY CLAUSE.

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

25. WAIVER.

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

26. NOTICES.

Except for verbal notification for Emergency Response as allowed in Exhibit A of this Agreement, Scope of Services, Section No. 3 titled **Emergency Response Time Frames**, all notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

The Office of the Director of Electric Utility
Attention: Dave Padilla
City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 988-1080

And to Contractor addressed as follows:

Contractor's notice address:

Name: Johnny Lanning

Address: 15 Cloverdale Place, P.O. Box 70,
Cloverdale, VA 24077

or by facsimile at (540) 966-1699

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday or a City/Nationally recognized holiday shall be deemed to have been transmitted on the following Monday or business day.

27. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

28. STATUTES AND LAW GOVERNING CONTRACT.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

29. COMPLIANCE WITH LAWS.

Contractor shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

30. DISPUTE RESOLUTION.

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.

- D. Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation or mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome the litigation.

31. VENUE.

In the event that suit shall be brought by either Party, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

32. OTHER AGREEMENTS.

This Agreement shall not prevent either Party from entering into similar agreements with others.

33. CONFLICT OF INTEREST.

Contractor certifies that to the best of its knowledge, no City employee or officer of any public agency has any pecuniary interest in the business of Contractor and that no person associated with Contractor has any interest that would conflict in any manner or degree with the performance of this Agreement. Contractor represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which constitute a violation of said provisions. Contractor will advise City if a conflict arises.

34. TERMINATION OF AGREEMENT.

a. Termination Without Cause

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than ninety (90) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

b. Termination For Cause

For purposes of this Agreement, the term "default" shall mean the failure of any Party to perform any material obligation in the time and manner provided by this Agreement. Either Party may terminate this Agreement in the event of a default by the other Party by providing a written Notice of Termination to the defaulting Party. Such Notice of Termination shall become effective no less than ten (10) calendar days after a Party

receives such notice. Such Notice of Termination for cause shall include a statement by the terminating Party setting forth grounds for determination of default under the Agreement. In the event this Agreement is terminated for cause as set forth under this section, City shall pay Contractor for all Services satisfactorily performed up to the date the Agreement is terminated. City may deduct from such payment the amount of actual damage, if any, sustained by City due to Contractor's failure to perform the Services or for breach of this Agreement.

c. Opportunity To Cure Default

Upon receipt of a Notice of Termination by a Party arising from its default under this Agreement, the defaulting Party shall have five (5) days from the receipt of such notice to cure the default by making such payment or performing the required obligation. If the default is cured to the mutual satisfaction of the Parties, the Agreement shall remain in effect upon written acceptance of the cure by the Party who issued the Notice of Termination for cause.

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35. COMPLIANCE WITH ETHICAL STANDARDS.

As a condition precedent to entering into this Agreement, Contractor shall:

- a. Read the attached Exhibit D entitled "ETHICAL STANDARDS," and,
- b. Execute the affidavit attached as Exhibit E entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to form:

HELENE LEICHTER
City Attorney

Attest:

JENNIFER SPARACINO
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408)615-2210
Fax: (408)241-6771

ROD DIRIDON, JR.
City Clerk

"City"

NEW RIVER ELECTRICAL CORPORATION
a Virginia Corporation

By: _____
JOHNNY LANNING
Title: Vice President
Address: 15 Cloverdale Place
P.O. Box 70
Cloverdale, VA 24077
Telephone: (540) 966-1650
Facsimile: (540) 966-1699

AGREEMENT FOR SERVICES
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CITY OF SANTA CLARA, CALIFORNIA
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EXHIBIT A

SCOPE OF SERVICES

The following Scope of Goods/Services are to be provided to City by Contractor under this Agreement:

1. **SCOPE**

Contractor shall provide, at its own cost and expense, all necessary supervision, labor, consumable materials, equipment, tools, construction equipment and machinery, utilities, transportation, any and all applicable taxes and other facilities and work necessary for the proper execution and completion to the satisfaction of Electric Department of the City of Santa Clara, doing business as Silicon Valley Power ("SVP") for the services performed under this Agreement.

2. **GENERAL**

The Services to be provided by the contractor under this agreement consist of emergency response, preventive maintenance, and visual inspection services on SVP's underground transmission facilities operating at nominal voltages of 60kV, 115kV and 230kV, including appropriate supervision, technical expertise, labor, equipment and materials, including, but not limited to:

- a) Emergency Response - Execution of the Services shall include, at a minimum, the ability to respond as required herein upon report of damage to, or failure of, SVP underground transmission facilities; to inspect, assess, repair, and restore functionality to SVP owned Underground Transmission Facilities whenever called upon by SVP, and, to perform services which, include but are not limited to:
- discovery work (hereinafter "troubleshooting") to ascertain the nature and extent of damage to, or failure of, underground transmission facilities;
 - removal and replacement of underground transmission facilities including all cable and cable accessories;
 - underground Trenching and replacement/repair of conduit and infrastructure, as specified in the most current revision to City of Santa Clara Engineering Standard UG 1000, incorporated herein by reference, and by other site-specific installation documentation as may be provided by SVP;

- splicing, termination and testing of SVP owned underground transmission cable in accordance with manufacturers specifications;
- provide photo documentation of all problems discovered and repairs made;
- provide a written report on the findings and condition of the underground transmission facilities inspected.

b) Preventive Maintenance Services - Services to be performed by Contractor at City's request. To include at a minimum:

- furnish all test forms and equipment with calibration documentations;
- visually inspect all manholes, manhole racking, link boxes, all grounding and sheath arrestors;
- visually inspect the cable to identify any movement due to expansion and contraction during cable cycling;
- inspect all cable clamping supports and clamps for tightness and integrity;
- inspect all accessible electrical connections;
- perform thermal image inspection to identify any loose connections
- perform TDR testing and phase conductor resistivity readings to establish a base line for the system to aid in future system evaluations and cable fault locating;
- inspect and clean the terminators and arrestor on the termination structures;
- provide photo documentation of all problems discovered and repairs made;
- provide a written report on the findings and condition of the underground transmission facilities inspected.

c) Visual Inspection Services - Services to be performed by Contractor at City's request. Contractor will:

- perform a visual inspection of all accessible portions of SVP's underground transmission facilities to identify any potential maintenance or reliability concerns;
- inspect SVP's spare parts and materials inventory to confirm serviceability and adequacy of supply;
- provide photo documentation of all problems discovered;
- provide a written report that summarizes the results of the inspection of SVP's underground transmission facilities and spare parts and materials inventory, including details of any problems found and recommended solutions to those problems.

Visual Inspection Services shall not be performed as a separate Service in those years that Preventive Maintenance Services are performed.

3. **EMERGENCY RESPONSE TIME FRAMES**

Upon receipt of verbal and facsimile notification from SVP's authorized representative Contractor shall make every reasonable effort to have appropriate troubleshooting personnel and equipment on site to locate fault(s) on SVP's underground transmission system within forty-eight (48) hours of such notification. Contractor shall make every reasonable effort to have appropriate restoration/repair personnel on site in Santa Clara to begin restoration of functionality of underground transmission facilities within seven (7) days of such notification. It is understood that due to circumstances including, but not limited to, other contractual obligations, Contractor personnel may not be available to respond within a timeframe that is acceptable to City. Nothing in this Agreement precludes City from entering into similar agreements with others and requesting Service on a case-by-case basis from the contractor who can best meet City's emergency response needs.

4. **CONTRACTOR SERVICE REQUIREMENTS**

Contractor agrees to provide Service according to the following standards:

- a) **Emergency Service Definition:** An emergency is defined as failure of any underground transmission facilities functionality. Contractor will provide services as requested by SVP to restore functionality.
- b) **Single point of contact:** Contractor will provide a single point of contact available by direct phone service to initiate restoration service and from that point on will provide a single point of contact by direct telephone service at the restoration site until all temporary or permanent restoration is complete. SVP will provide an authorized SVP representative as a single point of contact to the Contractor to exchange required communications regarding restoration during the Emergency Response. Both Contractor and SVP shall provide back-up names and phone numbers for the single point of contact individual.
- c) **Coverage Time:** Contractor crews will be available 24 hours/day, 7 days/week, continuously throughout the term of the contract.
- d) **Dedicated Service:** Upon starting repair services, Contractor personnel will continue those services as expeditiously as possible until repairs are completed, functionality restored, and the designated City representative is notified and concurs that functionality has been restored.
- e) **Equipment and Supplies:** While providing the required Services under this Agreement, Contractor shall provide all tools and test equipment required to troubleshoot and repair SVP underground transmission facilities. SVP reserves the right to supply some or all of the repair/replacement components of City's underground transmission facilities necessary to restore functionality to SVP underground transmission facilities.

Contractor shall credit SVP for any SVP furnished materials that are used, lost, stolen, damaged or rendered unusable by actions of the Contractor. Except as allowed in Schedule B of this Agreement, **FEE SCHEDULE**, nothing in this paragraph shall be deemed to obligate SVP to purchase or pay for tools, equipment, or vehicles which Contractor utilized to carry out its duties under this Agreement, even though they may be destroyed or expended while not being incorporated into SVP's facilities.

- f) Contractor Contacts: Contractor shall provide SVP with a contact list containing the names and contact telephone numbers of supervisory management employees responsible for emergency response under this contract. Contractor shall update the list immediately upon a change in personnel or contact numbers.
- g) Status Reports: Contractor will provide no less than daily and on demand written status reports to the designated SVP representative during emergency repair work. Contractor will communicate all information regarding the condition and restoration through the SVP representative. No other contact or discussion of status is to be made without the specific direction of the SVP representative.

5. **UNDERGROUND EFFLUENT PUMPING**

Contractor shall be responsible for pumping out the water/effluent in any underground substructure vault that is in a flooded condition and that prevents the full or partial performance of the Services required under this Agreement. If Contractor pumps any water/effluent from a flooded underground substructure, Contractor shall properly dispose of such water/effluent in a manner consistent with the requirements of all applicable local, state and/or federal regulations.

6. **PROTECTIVE MEASURES, SECURITY, SAFETY AND CLEANUP**

Contractor and its subcontractors, if any, shall:

- a) Be responsible for all injury or damage to individuals or property that may occur as a result of its fault or negligence, or that of its subcontractors, suppliers or agents, in connection with the performance of the Services provided under this Agreement. Contractor shall be responsible for the proper care and protection of all equipment and materials furnished by Contractor, including but not limited to any rental equipment, SVP, or any third party until final acceptance of Services by SVP. Contractor shall also protect adjacent property as necessary and prudent.
- b) Ensure that the integrity of City electric utility facilities and the continuity of electric service to City and City's customers are not compromised or

interrupted in whole or in part due to the Contractor's performance of Services

- b) Take all necessary precautions for the safety of its employees, subcontractors, suppliers, agents, SVP Personnel, and the public on the job site and prevent accidents or injury to such individuals on, about, or adjacent to job site including work on SVP high voltage electrical substations and generating plants.
- c) Erect and properly maintain at all times, as required by traffic conditions and progress of the Services, all necessary traffic control, safeguards and warnings for the protection of its employees, SVP employees and the public.
- d) Be aware of and in full compliance with any and all laws, orders, citations, rules, regulations, standards and statutes in effect with respect to occupational health and safety, the handling and storage of Hazardous Material, accident prevention, safety equipment and standard industry practices. Contractor shall conduct any inspections required to determine that safe working conditions and equipment exist. Contractor accepts sole responsibility for: (a) providing a safe place to work for its employees and for employees of its subcontractors, suppliers and agents, and (b) insuring the adequacy of and required use of all safety practices, procedures and equipment.
- e) Be solely responsible for the erection, maintenance, dismantling, and removal of any temporary structures, shoring, facilities or services necessary for the completion of the Services. The entire responsibility for proper configurations and dimensions for prefabrications of any part of the Services shall rest with Contractor.
- f) Furnish SVP with copies of all accident reports, promptly reporting any accident or injury to any of its employees or agents, including any employees or agents of any and all subcontractors and suppliers utilized in the performances of the Services.
- g) Be responsible for any and all security services required for the performance and completion of the Services. SVP shall have no responsibility for the security of the Contractor's (or any of its subcontractors) equipment and/or materials stored at the job site or at a City provided site during the performance of the Services.
- h) Employ labor in accordance with all applicable codes, including but not limited to federal, state, regional, municipal and local safety codes.
- i) Perform the Services, including any necessary clean-up as to maintain the job site in a clean, safe and orderly condition.

- j) Upon completion of the Services, and prior to final progress payment (a) clean all surfaces, fixtures, equipment and other items which are a part of the Services or may have been soiled during the performance of such Services, and (b) remove from the job site and legally dispose of all temporary structures, tools, equipment supplies, machinery and other items incidental to Contractor's operations, including all Hazardous Material.
- k) Follow all directions of City officials with regard to clean-up both during the course of, and upon completion of the Services. SVP shall be entitled to back charge Contractor for any costs of clean-up, if Contractor fails to clean up the work area within forty-eight hours (48) after demand by SVP.

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AGREEMENT FOR SERVICES
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CITY OF SANTA CLARA, CALIFORNIA
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NEW RIVER ELECTRICAL CORPORATION

EXHIBIT B
FEE SCHEDULE

NEW RIVER ELECTRICAL CORPORATION
COST PLUS LABOR RATES
Silicon Valley Power Emergency Response Agreement
Outside Line Agreement LU 1245

Effective Dates for Quoted Rates: 6/1/08 - 5/31/09

<u>Classification</u>	<u>Marked Up Billing Rates</u>	
	<u>Straight Time</u>	<u>Overtime</u>
Project Manager	\$120.00	\$120.00
General Foreman	\$112.82	\$178.03
Foreman	\$104.75	\$164.52
Journeyman Lineman	\$96.71	\$151.03
NRE Cable Splicer	\$96.71	\$151.03
<u>Apprentice Lineman</u>		
7th 1000 hours 90% of JL rate	\$88.66	\$137.55
6th 1000 hours 85% of JL rate	\$84.65	\$130.83
5th 1000 hours 80% of JL rate	\$80.64	\$124.10
4th 1000 hours 75% of JL rate	\$76.60	\$117.34
3rd 1000 hours 70% of JL rate	\$72.59	\$110.62
2nd 1000 hours 65% of JL rate	\$68.58	\$103.89
1st 1000 hours 60% of JL rate	\$64.55	\$97.14
Equipment Operator	\$76.27	\$116.78
Groundhand (Exp.)	\$62.16	\$93.13
<u>Subsistence Pay</u>		
NRE Project Manager	Billed at Expenses plus 10%	
NRE General Foreman	\$90.00 per day (<u>not included</u> in above rates)	
NRE Foreman	\$70.00 per day (<u>not included</u> in above rates)	
NRE Traveling Crew Members	\$60.00 per day (<u>not included</u> in above rates)	
Local Crew members Per Diem	\$50.00 per day (<u>not included</u> in above rates)	

Material: Cost Plus 15%
Subcontract and Equipment Rental: Cost Plus 10%

**NEW RIVER ELECTRICAL CORPORATION
NRE OWNEDEQUIPMENT RATES
Silicon Valley Power Emergency Response Agreement
Outside Line Agreement LU 1245**

Rental Equipment will be billed at cost plus 10%

	<u>DESCRIPTION</u>	<u>HOURLY RATE</u>
1	Pickup Truck	\$12.50
2	4WD Pickup	\$13.65
3	Power Wagon or 5-Man Crew Cab Pickup	\$13.65
4	Flatbed Truck w/wo winch up to and including 22 ton	\$14.25
5	3 to 5 Ton flatbed Truck, Tractor or Dump Truck	\$15.85
6	3 to 5 Ton Flatbed Truck with knuckle boom	\$28.75
7	Tandem Axle or Tri-Axle Dump Truck	\$32.20
8	Truck w/digger derrick	\$34.50
9	Bucket Truck under 40 feet	\$20.13
10	Bucket Truck over 40' up thru 55'	\$23.00
11	Bucket Truck over 55' up thru 75'	\$29.33
12	Bucket Truck over 75' up thru 90'	\$103.50
13	Bucket Truck over 90' up thru 150'	\$155.25
14	Crane Truck, Hydraulic, Under 15 Ton	\$36.23
15	Crane Truck, Hydraulic, Over 15 Ton to 25 Ton	\$52.90
16	Crane Truck, Hydraulic, 30 to 50 Ton	\$86.25
17	D-2 Dozer or Loader	\$51.75
18	D-6 Dozer or Equivalent	\$74.75
19	D-8 Dozer or Equivalent	\$97.75
20	Tilt Trailer	\$11.50
21	25 Ton Flat w/tractor	\$40.25
22	35 Ton Lowboy w/tractor	\$51.75
23	50 Ton Lowboy w/tractor	\$57.50
24	Earth Auger on Truck to 36" Auger	\$46.00
25	Earth Auger on Truck over 36" to 54"	\$74.75
26	Earth Auger on Truck over 54" to 84"	\$97.75
27	Backhoe, Under 2 cubic yard	\$20.70
28	Backhoe, 2 cubic yard and over/hydraulic clam	\$51.75
29	Power Tamper or compactor	\$5.75
30	Vibratory roller-Raygo 400 or equivalent	\$51.75
31	Air Compressor w/tools, under 100 CFM	\$11.50
32	Air Compressor w/tools, 100 CFM & over	\$14.95
33	Hydraulic Compression tools, 60 Ton	\$4.60
34	Hydraulic Compression tools, 100 Ton	\$6.90
35	Hydraulic Compression tools, 150 Ton	\$10.35
36	Concrete Vibrator	\$2.30
37	Water Pump 3" or Smaller	\$4.60
38	Water Pump 4" to 6"	\$6.90
39	Portable Electric Generator Minimum 3000 watts	\$6.90
40	Chain Saw (20" minimum)	\$5.18
41	Transit-Level	\$6.90
42	Underground Trencher Min. 24" depth	\$11.50
43	Underground Trencher Min. 42" depth	\$20.70

44	Wheel Mounted Rock Saw	\$77.05
45	Small Motor Grader	\$46.00
46	Backhoe w/hoe ram attachment	\$34.50
47	Tracked Excavator w/4000 lb. impact hammer	\$201.25
48	Earth Auger, Gas, Hand Operated	\$7.48
49	Concrete Saw (including blade)	\$11.50
50	Skid Loader with bucket	\$17.25
51	Chipper	\$17.25
52	Electronic Distance Meter/Transit	\$11.50
53	Tool Truck/Mobile Office	\$4.60
54	Material Trailer	\$2.30
55	Helarc Welder	\$23.00
56	Arc Welding Unit - AC or DC	\$11.50
57	Acetylene Cutting Outfit w/gas filled tanks and hoses	\$17.25
58	Hogan precision magnetic drill	\$6.90
59	Hydraulic knock out set	\$3.45
60	PVC 2" - 6" conduit bender	\$3.45
61	100kV D.C. Hi Potential Cable Tester	\$28.75
62	JT920/440 Directional Boring Machine up to 300' long and up to 6" diameter	\$92.00
63	JT1720 Directional Boring Machine up to 800' long and up to 8" diameter	\$149.50
64	JT2720 Directional Boring Machine up to 1200' long and up to 12" diameter	\$201.25
65	Earth Auger, gasoline, hand operated (large) up to 6" diameter hole	\$14.38
66	Pavement Breaker, gasoline, hand operated	\$14.38
67	6 Ton Fork Lift	\$17.25
68	Cellular Phone	\$1.44
69	Motorized Hydraulic Self-load Reel Cart	\$6.90
70	Truck mounted 40,000lb. Underground pulling machine	\$120.00
71	Pulling Machine 20,000 lb. underground	\$20.70
72	Pulling Machine 3,000 lb. overhead	\$4.60
73	Tandem Axle Reel Trailer w/1 to 4 reel stands	\$11.50
74	4 Drum Puller, 6,000 lb.	\$20.70
75	4WD All Terrain ATV	\$5.75
76	Crane 28 Ton Rough Terrain	\$52.90
77	Manlift up to 40 ft.	\$20.70
78	Manlift 41-65 ft.	\$25.30
79	Manlift 66-90 ft.	\$36.80
80	Custom designed and built 100,000 lb. self-loading reel cart with payout feature as well as 6,000 lbs. of pullback capabilities	\$50.00
81	Manhole Environmental Control Unit (splice trailers)	\$20.00

In no event shall the amount billed to City by Contractor for services under this Agreement exceed \$100,000.00, subject to budget appropriations.

Prior to performing services, New River Electrical Corporation will provide a budgetary cost estimate for the yearly maintenance and/or inspection services contained in this agreement to allow for budget appropriations. Upon written approval, New River Electrical Corporation will schedule and coordinate the annual services. New River Electrical Corporation and the City of Santa Clara are to mutually agree upon which month of the year maintenance/inspections are to be performed.

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EXHIBIT C
INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$2,000,000 Each occurrence
 - \$2,000,000 General aggregate
 - \$2,000,000 Products/Completed Operations aggregate
 - \$2,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance

Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL).

4. Cancellation.

(a) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

(b) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. Evidence of Coverage

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. Evidence of Compliance

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of Santa Clara Electric Department
c/o Insurance Data Services - Insurance Compliance
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543
Telephone: (951)766-2280; or
Fax: (951)766-2299

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

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EXHIBIT D
ETHICAL STANDARDS

Termination of Agreement for Certain Acts.

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty.³
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with the contractor can be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

B. The City may also terminate this Agreement in the event any one or more of the following occurs:

1. If the City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or
2. If the City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, contractor's failure to maintain a required state issued license, failure to obtain a City business license (if applicable), or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process, or a contract is terminated pursuant to the these provisions, Contractor may appeal the City action to the City Council by filing a written request with the City Clerk to have the matter heard within ten (10) days of the notice given by the City. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code [11 U.S.C.], as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

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EXHIBIT E
AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I, Johnny Lanning, being first duly sworn, depose and state I am Vice President of New River Electrical Corporation and I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

NEW RIVER ELECTRICAL CORPORATION
a Virginia Corporation


JOHNNY LANNING
Vice President

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

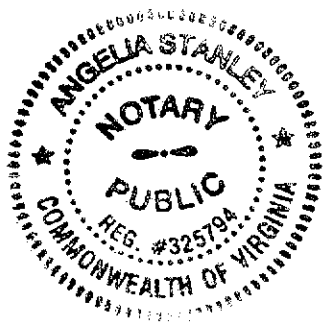
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ~~California~~ Virginia

County of Botetourt

On September 3, 2008 before me, Angelia Stanley, Executive Assistant, New River Electrical Corporation
Date Here insert Name and Title of the Officer

personally appeared Johnny E. Lanning, Vice President, New River Electrical Corporation
Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Angelia Stanley
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement for Services by and between the City of Santa Clara & New River Electrical

Document Date: 7/10/08 Number of Pages: 26

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Johnny E. Lanning

- ☒ Individual
☒ Corporate Officer — Title(s): Vice President
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: New River Electrical Corp.

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
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